SINGLE BENCH (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 6196 OF 2005.

PETITIONER : Ramachandra Yadav , Son of Sri. Manohar Yadav, aged about 28 years, working as a Panchayat Karmi (Secretary), resident of village : Amdari, Post : Rajpur, Tehsil : Rajpur, District : Surguja (C.G).

VERSUS

RESPONDENTS :

1. State of Chhattisgarh through the Secretary, Panchayat and Social Welfare Department, D.K.S. Bhavan, Raipur (C.G).
2. The Collector, Ambikapur, Distt : Surguja (C.G.)
3. The Dy. Director, Panchayat and Social Welfare Department, Ambikapur, Distt : Surguja (C G).
4. The Chief Executive Officer, Janpad Panchayat, Rajpur, District : Surguja (C G).
5. The Sarpanch, Village Panchayat : Amdari, Janpad Panchayat : Rajpur, Distt : Surguja (C G).

P.R. No. B/6251/05
Presented by Shri V.K. Pandey
dated 5/12/05

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WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA.

1. Particulars of the Petitioner :

As mentioned above in the cause title.

2. Particulars of the Respondents :

As mentioned above in the cause title.

...2/-

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Singie Bench : Hon'ble Shri Satish K. Agnihotri, J.

W. P. No. 6196 of 2005

PETITIONER Ramchandra Yadav

Versus

RESPONDENTS State of Chhattisgarh and others.

Present : Shri V.K. Pandey, counsel for the petitioner.
Shri Sushil Dubey, Govt. Adv. for the State / respondents No. 1 to 3.
Shri Pankaj Shrivastava, counsel for respondent No.5.

ORDER
(2nd January, 2007)

The petitioner was appointed as Panchayat Karmi on 08-04-2005 (Annexure P/3). He was thereafter appointed as Panchayat Secretary of Gram Panchayat, Amdari by order dated 15-06-2005 (Annexure P/4). Subsequently by order dated 30-08-2005 the appointment of the petitioner as Panchayat Karmi (Secretary) was cancelled. The petitioner has impugned the said order dated 30-08-2005 in this writ petition on the ground that the impugned order canceling the appointment of the petitioner on the post of Panchayat Karmi (Secretary) was passed without following the provisions enshrined in Rule 7 of C.G. Panchayat Service (Discipline and Appeal) Rules, 1999 (for short "the Rules").

(2) Learned counsel appearing for the petitioner submits that Rule 7 provides for detailed procedure for imposing major penalties i.e. removal from service. According to the learned counsel for the petitioner, cancellation of the appointment order tantamounts to removal from service and the same comes within the purview of major penalty.

(3) Shri Sushil Dubey, learned Govt. Advocate for the State / respondents No. 1 to 3 and Shri Pankaj Shrivastava, learned counsel for respondent No. 5 submit that the appointment of the petitioner on the post of Panchayat Karmi was void *ab initio* as the procedure prescribed for appointment on the post of Panchayat Karmi was not followed.

(4) Be that as it may, the petitioner was appointed as Panchayat Karmi, thereafter he was appointed as Panchayat Secretary and was permitted to work till 30-08-2005 as Panchayat Karmi (Secretary). It is not the case of the respondents that any show cause notice was issued to the petitioner or any procedure as prescribed in Rule 7 of the Rules was followed before the impugned order was passed. A Division Bench of this Court in its order dated 25-07-2006 passed in W.P. No. 1656 of 2004 and this Court in its order dated 15-11-2006 passed in W.P. No. 1850 of 2001, have held that Rule 7 of the Rules have to be followed in the case of termination of a Panchayat employee.

(5) This Court in *Dhaluram Kosaria Vs. State of C.G. & others*[1], *Beegan Ram Vs. State of C.G. & others*[2] and *Prakash Chand Soni Vs. State of C.G. & others*[3] held that the non compliance of the statutory provisions and denial of principles of natural justice tantamount to infraction of not only the provisions of Rule 7 of the Rules of 1999, but, the provisions of Article 311 (2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules of 1999.

(6) It is thus clear that the respondents have not followed the statutory provisions of law before imposing the major penalty of removal of the petitioner from the post of Panchayat Secretary.

(7) For the reasons and the discussion made herein above and the dicta laid down by the Court in various cases (Supra), the order dated 30-08-2005 (Annexure P/2) is bad and is quashed.

(8) On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view the fact that the termination order has been vitiated not on merit, but, on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 50% back wages would be sufficient in the interest of justice. It is, however, made clear that this order shall not come in the way of the respondents from initiating the proceedings against the petitioner, if they are so advised, strictly in accordance with law and in terms of the procedure prescribed in Rule 7 of the Rules.

(9) Accordingly, the writ petition is allowed to the extent indicated above. No costs.

Sd/-
Satish K. Agnihotri
Judge

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1. 2006 (2) CGLJ 186
2. 2006 L.T. (C.G.) 41
3. 2005 L.T. (C.G.) 151